



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 97-33
July 7, 1999

MISCELLANEOUS ADMINISTRATIVE REVISIONS

PURPOSE: To conform the current coverage on regulatory maintenance to reflect that the NFS is available from NASA only in electronic format; correct referenced addresses and document titles; and clarify that FAR 52.227-11, Alternate IV, is not used in NASA contracts.

BACKGROUND: NASA has made the NFS available to the public on a subscription basis through the Government Printing Office. However, NASA has determined that it is more efficient and economical to provide the NFS only through electronic means. This approach ensures greater accuracy, wider dissemination, and immediate implementation of changes. The official NASA-maintained version of the NFS is available at <http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm>. Internal NASA distribution of NFS revisions is not affected by this change.

REGULATION: Changes are made in Parts 1801, 1804, 1809, 1815, 1827, 1832, 1852, and 1872 as set forth in the enclosed replacement pages.

REPLACEMENT PAGES: You may use the enclosed pages to replace Part 1801, 4:3, 4:4, Part 1809, 15:25, 15:26, 27:3, 27:4, 32:5, 32:6, 52:57, 52:58, 52-95, 52-96, 72:5, and 72:6 of the NFS.

REGULATORY COMPLIANCE: This PN was published as a final rule in the Federal Register (64 FR 36605-36606, July 7, 1999).

EFFECTIVE DATE: This PN is effective as dated and shall remain in effect until canceled or superseded.

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Enclosures

DISTRIBUTION:
NFSD List

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PART 1801
FEDERAL ACQUISITION REGULATIONS SYSTEM

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PART 1801
FEDERAL ACQUISITION REGULATIONS SYSTEM

1801.000 Scope of part.

This part sets forth general information about the National Aeronautics and Space Administration (NASA) Federal Acquisition Regulation (FAR) Supplement, also referred to as the NFS.

Subpart 1801.1--Purpose, Authority, Issuance

1801.103 Authority.

(a) Under the following authorities, the Administrator has delegated to the Associate Administrator for Procurement authority to prepare, issue, and maintain the NFS:

- (i) The National Aeronautics and Space Act of 1958 (Pub. L. 85-568; 42 U.S.C. 2451 et seq.).
- (ii) 10 U.S.C. chapter 137.
- (iii) Other statutory authority.
- (iv) FAR subpart 1.3.

1801.104 Applicability.

The NFS applies to all acquisitions as defined in FAR Part 2 except those expressly excluded by the FAR or this regulation.

1801.105 Issuance.

1801.105-1 Publication and code arrangement.

(a) The single official NASA-maintained version of the NFS is on the Internet (<http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm>).

(b) The NFS is issued as chapter 18 of title 48, CFR.

1801.105-2 Arrangement of regulations.

(b)(1)(A) Numbering of NFS text implementing the FAR shall be the same as that of the related FAR text, except when the NFS coverage exceeds one paragraph. In such case the NFS text is numbered by skipping a unit in the FAR 1.105-2(b)(2) prescribed numbering sequence. For example, two paragraphs implementing FAR 1.105-2(b)(1) are numbered 1801.105-2(b)(1)(A) and (B), rather than (1)(i) and (ii). Further subdivision of the NFS implementing paragraphs would follow the prescribed sequence in FAR 1.105(b)(2).

(B) NFS text that supplements the FAR part is numbered the same as its FAR counterpart with the addition of a number 70 and up. For example, NFS supplement of FAR subsection 1.105-3 is numbered 1801.105-370. Supplemental text exceeding one paragraph is numbered using the FAR 1.105-2(b)(2) prescribed numbering sequence without skipping a unit.

(2) Subdivision numbering below the fourth level repeats the numbering sequence using italicized letters and numbers.

1801.106 OMB approval under the Paperwork Reduction Act.

(1) *NFS requirements.* The following OMB control numbers apply:

NFS Segment	OMB Control Number
1819	2700-0073
1819.72	2700-0078
1827	2700-0052
1843	2700-0054
NF 533	2700-0003
NF 667	2700-0004
NF 1018	2700-0017

(2) *Solicitations and contracts.* Various requirements in a solicitation or contract, generally in the statement of work, are not tied to specific paragraphs cleared in paragraph (1) of this section, yet require information collection or recordkeeping. The following OMB control numbers apply to these requirements: 2700-0086 (acquisitions up to \$25,000), 2700-0087 (solicitations that may result in bids or proposals not exceeding \$500,000), 2700-0085 (solicitations that may result in bids or proposals exceeding \$500,000), 2700-0088 (contracts not exceeding \$500,000), and 2700-0089 (contracts exceeding \$500,000).

Subpart 1801.2--Administration

1801.270 Amendment of the NFS.

(a) The NFS is amended by publishing changes in the Federal Register. These changes are then incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). PNs are numbered consecutively, prefixed by the last two digits of the calendar year of issuance of the current edition of the NFS.

(b) Compliance with a revision to the NFS shall be in accordance with the PN containing the revision. Unless otherwise stated, solicitations that have been issued, and bilateral agreements for which negotiations have been completed, before the receipt of new or revised contract clauses need not be amended to include the new or revised clauses if including them would unduly delay the acquisition.

1801.271 NASA procedures for FAR and NFS changes.

(a) Informal suggestions for improving the NFS, including correction of errors, should be directed to the Headquarters Office of Procurement (Code HK).

(b)(1) Formal requests for changes to the FAR or the NFS should be written and contain (i) a description of the problem the suggested revision is designed to cure, (ii) the revision in the form of a marked-up copy of the current FAR or NFS language or the text of any additional language, (iii) the consequences of making no change and the benefits to be expected from a change, and (iv) any other information necessary for understanding the situation, such as relationship between FAR and NFS coverage, legal opinions, coordination with other offices, and existing agreements.

(2) Formal requests for FAR and NFS changes should be sent to Code HK. Requests from Headquarters offices should originate at the division level or higher, while installation requests should be signed at the procurement officer or higher level.

1801.272 Procurement Information Circulars.

(a) The Procurement Information Circular (PIC) is used for internal dissemination of procurement-related information and directives not suitable for inclusion in the NFS. Code HK is responsible for issuing PICs.

(b) PICs are numbered on a calendar year basis, beginning with number 1, prefixed by the last two digits of the year.

Subpart 1801.3--Agency Acquisition Regulations

1801.301 Policy.

(a)(2) Heads of NASA field installations may prescribe policies and procedures that do not have a significant effect beyond the internal operating procedures of their installations. All other policies, procedures, and solicitation and contract provisions and clauses must be forwarded to the Headquarters Office of Procurement (Code HK) for approval in accordance with 1801.271(b).

(b)(i) 41 U.S.C. 418b requires publication of NFS changes for public comment where there will be a significant effect beyond the internal operating procedures of the agency or a significant cost or administrative impact on contractors or offerors. However, it does not define "significant effect beyond the internal operating procedures" or "significant cost or administrative impact." Examples of policies or procedures that fall in either of these categories are:

(A) A contract clause requiring contractors to take precautions to avoid injury to Florida manatees, which have been designated as an endangered species, has a significant cost impact for contractors who must obtain protective devices for boat propellers and take other safety actions.

(B) A contract clause requiring contractors to follow the Government's holiday schedule, thereby disallowing premium pay for work on contractor-designated holidays, will have an effect outside the internal operating procedures of the agency.

(C) A contract clause requiring contractors to segregate costs by appropriations will affect the contractor's internal accounting system and have a significant impact.

(D) Requiring contractor compliance with NASA's Space Transportation System Personnel Reliability Program will have an effect outside the internal operating procedures of the agency.

(ii) In contrast, the following would not have to be publicized for public comment:

(A) Security procedures for identifying and badging contractor personnel to obtain access at a NASA installation.

(B) A one-time requirement in a construction contract for the contractor to develop a placement plan and for inspection prior to any concrete being placed. (This is part of the specification or statement of work.)

(C) A policy that requires the NASA installation to maintain copies of unsuccessful offers.

1801.303 Publication and codification.

(a) Part, subpart, and section numbers 70 through 89 are reserved for NFS supplementary material for which there is no FAR counterpart.

Subpart 1801.4--Deviations from the FAR

1801.400 Scope of subpart.

This subpart prescribes the policies and procedures for authorizing deviations from the FAR and the NFS.

1801.471 Procedure for requesting deviations.

(a) Requests for authority to deviate from the FAR or the NFS shall be submitted by the Procurement Officer to the Headquarters Office of Procurement (Code HS).

(b) Each request for a deviation shall contain, as a minimum--

(1) Identification of the FAR or the NFS requirement from which a deviation is sought;

(2) A full description of the deviation, the circumstances in which it will be used, and the specific contract action(s) to which it applies;

(3) A description of its intended effect;

(4) A statement as to whether the deviation has been requested previously and, if so, the circumstances of the previous request;

(5) Identification of the contractor(s) and the contract(s) affected, including dollar value(s);

(6) Detailed reasons supporting the request, including any pertinent background information; and

(7) A copy of counsel's concurrence or comments.

(c) In addition to the information required by 1801.471(b), requests for individual deviations from FAR cost principles under FAR 31.101 should include a copy of the contractor's request for cost allowance.

Subpart 1801.6--Career Development, Contracting Authority, and Responsibilities

1801.601 General.

The authority to contract for authorized supplies and services is delegated to the Associate Administrator for Procurement and installation officials by NPD 5101.32.

1801.602-3 Ratification of unauthorized commitments.

(b) Policy. Individuals making unauthorized commitments may be subject to disciplinary action, and the issue may be referred to the Office of Inspector General.

(c)(7) The authority in FAR 1.602-3 may be exercised only when--

(A) The Government employee who made the unauthorized commitment, or his/her supervisor, if appropriate, initiates a procurement request in accordance with 1804.7301.

(B) The procurement request and/or accompanying documentation identifies the individual who made the unauthorized commitment, and includes a statement signed by the individual that explains why normal acquisition procedures were not followed, explains why the firm was selected, lists other sources considered, describes the work, and estimates or states the agreed price. If the Government representative who made the unauthorized commitment is no longer available, appropriate program personnel shall provide the information described in this paragraph.

(C) The procurement request is submitted through the director of the cognizant program office at the contracting activity, or comparable official. In the procurement request, the director shall describe measures taken to prevent the recurrence of the unauthorized commitment.

1801.603 Selection, appointment, and termination of appointment.

1801.603-2 Selection.

Normally, only GS-1102 and -1105 personnel with the proper training and experience may be appointed contracting officers and only when a valid organizational need can be demonstrated.

1801.670 Delegations to contracting officer's technical representatives (COTRs).

A COTR delegation may be made only by the contracting officer cognizant of that contract at the time the delegation is made. If the cognizant contracting officer is absent, the delegation letter may be signed by a warranted contracting officer at any level above the cognizant contracting officer. An individual COTR may have only the duties specifically identified in a written delegation to him or her by name (i.e., COTR duties may not be delegated to a position) and has no authority to exceed them. COTRs should be informed that they may be personally liable for unauthorized commitments. Contracting officer authority to sign or authorize contractual instruments shall not be delegated through a COTR designation or by any means other than a contracting officer warrant.

Subpart 1801.7--Determinations and Findings

1801.707 Signatory authority.

Signatory authority for determinations and findings (D&Fs) is specified in the FAR or the NFS text for the associated subject matter. The Administrator may make any of the D&Fs that may be made by the Associate Administrator for Procurement or by a contracting officer.

1801.770 Legal review.

Each D&F, including class D&Fs, shall be reviewed by counsel for form and legality before signature by the approving authority.

PART 1804
ADMINISTRATIVE MATTERS

Subpart 1804.1--Contract Execution

1804.103 Contract clause.

The contracting officer shall include the clause at FAR 52.204-1, Approval of Contract, in solicitations, contracts, and supplemental agreements that require higher level approval. For actions requiring Headquarters approval, insert "NASA Associate Administrator for Procurement" in the clause's blank space.

1804.170 Contract effective date.

(a) "**Contract effective date**" means the date agreed upon by the parties for beginning the period of performance under the contract. In no case shall the effective date precede the date on which the contracting officer or designated higher approval authority signs the document.

(b) Costs incurred before the contract effective date are unallowable unless they qualify as precontract costs (see FAR 31.205-32) and the clause prescribed at 1831.205-70 is used.

Subpart 1804.2--Contract Distribution

1804.202 Agency distribution requirements.

In addition to the requirements in FAR 4.201, the contracting officer shall distribute one copy of each R&D contract, including the Statement of Work, to the NASA Center for AeroSpace Information (CASI), Attention: Document Processing Section, 7121 Standard Drive, Hanover, MD 21076-1320.

1804.203 Taxpayer identification information.

Instead of using the last page of the contract to provide the information listed in FAR 4.203, NASA installations may allow contracting officers to use a different distribution method, such as annotating the cover page of the payment office copy of the contract.

Subpart 1804.4--Safeguarding Classified Information Within Industry

1804.402 General.

(b) NASA industrial security policies and procedures are prescribed in NMI 1600.2, NASA Security Program. (See also 1842.202-72).

1804.404-70 Contract clause.

The contracting officer shall insert the clause at 1852.204-75, Security Classification Requirements, in solicitations and contracts if work to be performed will require security clearances. This clause may be modified to add instructions for obtaining security clearances and access to security areas that are applicable to the particular acquisition and installation.

1804.470 Security requirements for unclassified automated information resources.

1804.470-1 Scope.

This section implements the acquisition-related aspects of Federal policies for assuring the security of unclassified automated information resources.

1804.470-2 Policy.

NASA policies and procedures on automated information security are prescribed in NMI 2410.7, Assuring the Security and Integrity of NASA Automated Information Resources, and in NHB 2410.9, NASA Automated Information Security Handbook, Chapters 3 and 4. Security requirements for safeguarding sensitive information in unclassified Federal computer systems are required in: (a) contracts for automatic data processing equipment, software, the management or operation of Data Processing Installations (DPIs) or related services; and (b) contracts under which contractor personnel must have physical or electronic access to sensitive automated information, or automated information that supports mission-critical functions.

1804.470-3 Security plan for unclassified Federal Information Technology systems.

When considered appropriate for contract performance, the contracting officer, with the concurrence of the requiring activity and the center automated information security (AIS) manager, may require the contractor to submit for post-award Government approval a detailed Security Plan for Unclassified Federal Information Technology Systems. The plan shall be required as a contract data deliverable that will be subsequently incorporated into the contract as a compliance document after Government approval. The plan shall demonstrate thorough understanding of NMI 2410.7 and NHB 2410.9, and shall include, as a minimum, the security measures and program safeguards to ensure that the information technology resources acquired and used by contractor and subcontractor personnel:

- (a) Operate effectively and accurately;
- (b) Are protected from unauthorized alteration, disclosure, or misuse of information processed, stored, or transmitted;
- (c) Can maintain the continuity of automated information support for Government missions, programs, and functions;
- (d) Incorporate management, general, and application controls sufficient to provide cost-effective assurance of the system's integrity and accuracy; and
- (e) Have appropriate technical, personnel, administrative, environmental, and access safeguards.

1804.470-4 Contract clauses.

The contracting officer shall insert the clause substantially as stated at 1852.204-76, Security Requirements for Unclassified Automated Information Resources, in solicitations and contracts involving unclassified automated information resources. Paragraph (a) of the clause shall be completed with information supplied by the cognizant requiring activity.

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PART 1809
CONTRACTOR QUALIFICATIONS

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SUBPART
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Contract clause.**PART 1809**
CONTRACTOR QUALIFICATIONS**Subpart 1809.1--Responsible Prospective Contractors****1809.104-4 Subcontractor responsibility.**

Generally, the Canadian Commercial Corporation's (CCC) proposal of a firm as its subcontractor is sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information available to the contracting office, the contracting officer shall request from the CCC and any other sources whatever information is necessary to make the responsibility determination. Upon request, CCC shall be furnished the rationale for any subsequent determination of nonresponsibility.

1809.106 Preaward surveys.**1809.106-1 Conditions for preaward surveys.**

(a)(i) Preaward surveys are used only to assist the contracting officer to make determinations of responsibility under FAR 9.104. They are not to be used to obtain information useful to proposal evaluation that does not directly relate to the responsibility determination. Accordingly, preaward surveys shall not be used except in rare circumstances when determination of responsibility cannot be made without the specific information that can be provided only in a preaward survey report and only after all other means of obtaining the required information have been explored.

(ii) Surveys shall not be performed for companies of any size performing study or research contracts.

(iii) The procurement officer shall approve all preaward survey requests.

1809.106-2 Requests for preaward surveys.

(a) The "Walsh-Healey Public Contracts Act" block of Section I is for information purposes only. If information is needed for a determination on the offeror's eligibility under the Walsh-Healey Act, it must be specifically requested in block 20.H. of Section III.

1809.106-3 Interagency preaward surveys.

If the survey will be performed for NASA by a DOD agency, the SF 1403 request is to be sent to the appropriate office shown in the DOD Directory of Contract Administration Services Components, DLAH 4105.4, Attn: Preaward Survey Monitor. DOD normally allows seven working days in which to conduct a full survey and submit the report to the requesting agency.

1809.106-70 Preaward surveys performed by NASA installations.

In discussions with representatives of the company being surveyed, NASA preaward survey team members shall not refer to or comment on the possibility of award to the prospective contractor. This does not preclude discussion with a prospective contractor of questionable areas that require clarification. Information obtained during the survey will be treated in strict confidence and divulged only to those Government representatives having a need to know.

Subpart 1809.2--Qualifications Requirements

1809.200 Scope of subpart.

This subpart prescribes policies and procedures to be followed in the use of qualified products lists for acquisition of parts consistent with the policies of NASA Policy Directive 8730.2, NASA Parts Policy.

1809.202 Policy.

(a) Authority regarding agency head actions under FAR 9.202(a) is delegated to the cognizant technical activity, with approval by the installation's competition advocate.

(e) The approval authority of FAR 9.202(e) is delegated to the installation's competition advocate. Requests shall be prepared by the cognizant requirements office and submitted via the procurement officer.

1809.203 QPL's, QML's and QBL's.

1809.203-70 General.

(a) The Deputy Associate Administrator for the Office of Safety and Mission Assurance (Code Q), is responsible for justifying, determining, and approving NASA's need for inclusion and continued use of qualification requirements in specifications under the NASA EEE Parts and Advanced Interconnect Program.

1809.203-71 Waiver of qualification requirements.

When acquiring a product under a specification that includes qualification requirements either for the end item or for components of the end item, the NASA installation conducting the acquisition can waive the qualification requirements. Directing a waiver of the end item qualification requirement constitutes adequate authorization for waiver of product qualification requirements. When a waiver has been granted, the solicitation shall specifically indicate that the qualification requirement is inapplicable. Such information shall also be included in any synopsis of the acquisition (see FAR Subpart 5.2).

1809.206 Acquisitions subject to qualification requirements.

1809.206-1 General.

(b)(i) The authority to determine that an emergency exists is delegated to the installation's competition advocate. Requests for determination shall be prepared by the cognizant requirements office and submitted through the procurement officer.

(ii) Requests not to enforce a qualification requirement in a nonemergency situation shall be prepared by the cognizant requirements office and approved by the Headquarters Office of Safety and Mission Assurance (Code Q).

(c) If an offeror seeks to demonstrate its capability, both the product and the producer must meet the established standards.

1809.206-70 Small businesses.

If a small business otherwise eligible for award has been placed in a special status on a Qualified Products List (Mil-Bul-103) or the Qualified Manufacturers List (QML-38510) established as a part of the NASA Microelectronics Reliability Program and the contracting officer determines that the small business does not appear to have the capacity to perform, the certificate of competency procedures in FAR Subpart 19.6 are applicable.

1809.206-71 Contract clause.

When qualified products (end items or components of end items) are being procured, the contracting officer shall insert the clause at 1852.209-70, Product Removal from Qualified Products List, in the solicitation and in the resulting contract.

Subpart 1809.4--Debarment, Suspension, and Ineligibility

1809.403 Definitions.

For purposes of FAR Subpart 9.4 and this subpart, the Associate Administrator for Procurement is the "debarment official," the "suspending official," and the agency head's "designee."

1809.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(c) The Office of Procurement (Code HK) is responsible for taking the actions listed in FAR 9.404(c).

(d)(1) Installation procurement offices shall notify Code HK of how many copies of the List they want and provide a single mailing address at the installation. Code HK will place the order for the copies which will be mailed directly to the installation. Electronic access is also available as described in the List.

1809.405 Effect of listing.

If it is believed that a new contract or subcontract must be awarded to a firm on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, the procurement officer shall prepare a request for a determination with all necessary supporting information and forward it to the Associate Administrator for Procurement (Code HK) for approval.

1809.405-1 Continuation of current contracts.

(c) Approval of contract renewals or extensions shall be requested in accordance with 1809.405.

1809.405-2 Restrictions on subcontracting.

(a) Approval of consent to subcontract shall be requested in accordance with 1809.405.

1809.406 Debarment.

1809.406-3 Procedures.

(a) The report required by FAR 9.406-3(a) shall be prepared in accordance with 1809.470.

1809.407 Suspension.

1809.407-3 Procedures.

(a) Reports shall be prepared in accordance with 1809.470.

1809.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

(a)(2)(A) If the offeror indicates that it has been indicted, charged, convicted, or had a civil judgment rendered against it, the contracting officer shall immediately notify the Associate Administrator for Procurement (Code HK), providing details as known, and shall await a response before awarding the contract.

(B) If the offeror discloses information that indicates a need for a debarment or suspension determination, the contracting officer shall report the facts to the Associate Administrator for Procurement (Code HK) in accordance with 1809.470.

1809.470 Reporting of suspected evasive actions and causes for debarment or suspension.

1809.470-1 Situations requiring reports.

A report incorporating the information required by 1809.470-2 of this subpart shall be forwarded by the procurement officer to the Associate Administrator for Procurement (Code HK) when a contractor:

- (a) Has committed, or is suspected of having committed, any of the acts described in FAR 9.406-2 and 9.407-2; or
- (b) Is suspected of attempting to evade the prohibitions of a debarment or suspension imposed under the FAR by changes of address, multiple addresses, formation of new companies, or other devices.

1809.470-2 Contents of reports.

Each report shall be coordinated with local counsel and shall include substantially the following information, if available:

- (a) Name and address of the contractor.
- (b) Names of the principal officers, partners, owners, or managers.
- (c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.
- (d) A description of the contract or contracts concerned, including the contract number and office identifying numbers or symbols, the amount of each contract, the amounts paid the contractor and still due, and the percentage of work completed and to be completed.
- (e) The status of vouchers.
- (f) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and, if so, the name and address of the assignee and a copy of the assignment.
- (g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, their amount, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on them.
- (h) A complete summary of all pertinent evidence. If a request for debarment or suspension is based on an indictment or a conviction, provide the evidence upon which the indictment or conviction is based.
- (i) An estimate of any damages, sustained by the Government as a result of the contractor's action, including an explanation of the method used in making the estimate.
- (j) Recommendation as to (1) whether the contractor should be suspended or debarred, (2) whether any limitations should be applied to such action, (3) whether current contracts should be terminated, and (4) the period of any debarment.
- (k) As an enclosure, a copy of the contract(s) or pertinent excerpts, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation.

1809.470-3 Addresses and copies of reports.

Reports, including enclosures, shall be submitted to the Office of Procurement (Code HK), with an additional copy to the Headquarters Office of General Counsel (Code G).

Subpart 1809.5--Organizational and Consultant Conflicts of Interest

1809.500 Scope of subpart.

The Associate Administrator for Procurement has authorized the procurement officer to take those actions reserved in FAR Subpart 9.5 for the head of the contracting activity. However, see 1809.503 regarding waivers.

1809.503 Waiver.

The Administrator has designated the Associate Administrator for Procurement as the approval authority for waivers under FAR 9.503. The procurement officer shall forward requests for waivers under FAR 9.503 to the Associate Administrator for Procurement (Code HS) for action.

1809.506 Procedures.

(b) The approving official is the procurement officer when the installation has source selection authority and the Associate Administrator for Procurement (Code HS) when NASA Headquarters has that authority.

1809.507 Solicitation provisions and contract clause.

1809.507-2 Contract clause.

The contracting officer may insert a clause substantially the same as the clause at 1852.209-71, Limitation of Future Contracting, in solicitations and contracts.

Subpart 1809.6--Contractor Team Arrangements

1809.670 Contract clause.

The contracting officer shall insert the clause at 1852.209-72, Composition of the Contractor, in all construction invitations for bids and resulting contracts. The clause may be used in other solicitations and contracts to clarify a contractor team arrangement where the prime contractor consists of more than one legal entity, such as a joint venture.

(b) The contracting officer shall insert the clause at 1852.215-79, Price Adjustment for "Make-or-Buy" Changes, in contracts that include FAR 52.215-9 with its Alternate I or II. Insert in the appropriate columns the items that will be subject to a reduction in the contract value.

Subpart 1815.5 --Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.504 Award to successful offeror.

The reference to notice of award in FAR 15.504 on negotiated acquisitions is a generic one. It relates only to the formal establishment of a contractual document obligating both the Government and the offeror. The notice is effected by the transmittal of a fully approved and executed definitive contract document, such as the award portion of SF 33, SF 26, SF 1449, or SF 1447, or a letter contract when a definitized contract instrument is not available but the urgency of the requirement necessitates immediate performance. In this latter instance, the procedures in 1816.603 for approval and issuance of letter contracts shall be followed.

1815.506 Postaward debriefing of offerors.

1815.506-70 Debriefing of offerors - Major System acquisitions.

(a) When an acquisition is conducted in accordance with the Major System acquisition procedures in Part 1834 and multiple offerors are selected, the debriefing will be limited in such a manner that it does not prematurely disclose innovative concepts, designs, and approaches of the successful offerors that would result in a transfusion of ideas.

(b) When Phase B awards are made for alternative system design concepts, the source selection statements shall not be released to competing offerors or the general public until the release of the source selection statement for Phase C/D without the approval of the Associate Administrator for Procurement (Code HS).

Subpart 1815.6--Unsolicited Proposals

1815.602 Policy.

(1) An unsolicited proposal may result in the award of a contract, grant, cooperative agreement, or other agreement. If a grant or cooperative agreement is used, the NASA Grant and Cooperative Agreement Handbook (NPG 5800.1) applies.

(2) Renewal proposals, (i.e., those for the extension or augmentation of current contracts) are subject to the same FAR and NFS regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts.

1815.604 Agency points of contact.

(a) Information titled "Guidance for the Preparation and Submission of Unsolicited Proposals" is available on the Internet at <http://ec.msfc.nasa.gov/msfc/nasahdbk.html>. A deviation is required for use of any modified or summarized version of the Internet information or for alternate means of general dissemination of unsolicited proposal information.

1815.606 Agency procedures.

(a) NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or to the Jet Propulsion Laboratory (JPL) without the offeror's express consent.

(b)(i) NASA Headquarters and each NASA field installation shall designate a point of contact for receiving and coordinating the handling and evaluation of unsolicited proposals.

(ii) Each installation shall establish procedures for handling proposals initially received by other offices within the installation. Misdirected proposals shall be forwarded by the point of contact to the proper installation. Points of contact are also responsible for providing guidance to potential offerors regarding the appropriate NASA officials to contact for general mission-related inquiries or other preproposal discussions.

(iii) Points of contact shall keep records of unsolicited proposals received and shall provide prompt status information to requesters. These records shall include, at a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year; the identity of the offerors; and the office to which each was referred. The numbers shall be broken out by source (large business, small business, university, or nonprofit institution).

1815.606-70 Relationship of unsolicited proposals to NRAs.

An unsolicited proposal for a new effort or a renewal, identified by an evaluating office as being within the scope of an open NRA, shall be evaluated as a response to that NRA (see 1835.016-70), provided that the evaluating office can either:

- (a) State that the proposal is not at a competitive disadvantage, or
- (b) Give the offeror an opportunity to amend the unsolicited proposal to ensure compliance with the applicable NRA proposal preparation instructions. If these conditions cannot be met, the proposal must be evaluated separately.

1815.609 Limited use of data.

1815.609-70 Limited use of proposals.

Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with, the procedures prescribed in, 1815.207-70.

1815.670 Foreign proposals.

Unsolicited proposals from foreign sources are subject to NPD 1360.2, Initiation and Development of International Cooperation in Space and Aeronautics Programs.

Subpart 1815.70 -- Ombudsman

1815.7001 NASA Ombudsman Program.

NASA's implementation of an ombudsman program is in NPG 5101.33, Procurement Guidance.

1815.7002 Synopses of solicitations and contracts.

In all synopses announcing competitive acquisitions, the contracting officer shall indicate that the clause at 1852.215-84, Ombudsman, is applicable. This may be accomplished by referencing the clause number and identifying the installation Ombudsman.

1815.7003 Contract clause.

performance of experimental, developmental, or research work with a small business firm or a nonprofit organization is based on 35 U.S.C. Chapter 18, as amended.

(ii) NASA contracts subject to Section 305 of the Act shall ensure the prompt reporting of reportable items in order to protect the Government's interest and to provide widest practicable and appropriate dissemination, early utilization, expeditious development, and continued availability for the benefit of the scientific, industrial, and commercial communities and the general public.

(b) *Contractor right to elect title.*

(i) For NASA contracts, the contractor right to elect title only applies to contracts with small businesses and non-profit organizations. For other business entities, see subdivision (ii) of this paragraph.

(ii) **Contractor right to request a waiver of title.** For NASA contracts with other than a small business firm or a nonprofit organization (contracts subject to Section 305 of the Act), it is the policy of NASA to waive the rights (to acquire title) of the United States (with the reservation of a Government license set forth in FAR 27.302(c) and the march-in rights of FAR 27.302(f) and 1827.302(f)) in and to any subject invention if the Administrator determines that the interests of the United States will be served. This policy, as well as the procedures and instructions for such waiver of rights, is stated in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1. Waiver may be requested in advance of contract award for any or all of the subject inventions, or for individually identified subject inventions reported under the contract. When waiver of rights is granted, the contractor's right to title, the rights reserved by the Government, and other conditions and obligations of the waiver shall be included in an Instrument of Waiver executed by NASA and the party receiving the waiver.

(iii) It is also a policy of NASA to consider for a monetary award, when referred to the NASA Inventions and Contributions Board, any subject invention reported to NASA in accordance with this subpart, and for which an application for patent has been filed.

(c) *Government license.* For each subject invention made in the performance of work under a NASA contract with other than a small business firm or nonprofit organization and for which waiver of rights has been granted in accordance with 14 CFR Section 1245, Subpart 1, the Administrator shall reserve an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign Government in accordance with any treaty or agreement of the United States.

(d) *Government right to receive title.* Under any NASA contract with other than a small business or nonprofit organization (i.e., those contracts subject to Section 305(a) of the Act), title to subject inventions vests in NASA when the determinations of Section 305(a)(1) or 305(a)(2) have been made. The Administrator may grant a waiver of title in accordance with 14 CFR Section 1245.

(e) *Utilization reports.* For any NASA contract with other than a small business firm or a nonprofit organization, the requirements for utilization reports shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, and any Instrument of Waiver executed under those Regulations.

(f) *March-in rights.* For any NASA contract with other than a small business firm or a nonprofit organization, the march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, and any Instrument of Waiver executed under those Regulations.

(g) *Preference for United States industry.* Waiver of the requirement for the agreement for any NASA contract with other than a small business firm or a nonprofit organization shall be in accordance with the NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1.

(i) *Minimum rights to contractor.*

(1) For NASA contracts with other than a small business firm or a nonprofit organization (i.e., those contracts subject to Section 305(a) of the Act), where title to any subject inventions vests in NASA, the contractor is normally granted, in accordance with 14 CFR 1245, a revocable, nonexclusive, royalty-free license in each patent application filed in any country and in any

resulting patent. The license extends to any of the contractor's domestic subsidiaries and affiliates within the corporate structure, and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license and right are transferable only with the approval of the Administrator, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The Administrator is the approval authority for revoking or modifying a license. The procedures for revocation or modification are described in 37 CFR 404.10 and 14 CFR 1245.108.

1827.303 Contract clauses.

(a)(1)(A) See 1827.303-70(a).

(B) To qualify for the clause at FAR 52.227-11, a prospective contractor may be required to represent itself as either a small business firm or a nonprofit organization. If there is reason to question the status of the prospective contractor, the contracting officer may file a protest in accordance with FAR 19.302 if small business firm status is questioned, or require the prospective contractor to furnish evidence of its status as a nonprofit organization.

(5) Alternate IV to 52.227-11 is not used in NASA contracts. See instead 1827.303-70(a).

(b)(1)(ii) FAR 52.227-12 is not used in NASA contracts. See instead 1827.303-70(b).

(c)(1)(ii) When work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not domestic firms, see 1827.303-70(f).

(2) See 1827.303-70(b) and (f).

(d)(1) When one of the conditions in FAR 27.303(d)(1)(i) through (iv) is met, the contracting officer shall consult with the installation intellectual property counsel to determine the appropriate clause.

1827.303-70 NASA solicitation provisions and contract clauses.

(a) When the clause at FAR 52.227-11 is included in a solicitation or contract, it shall be modified as set forth at 1852.227-11.

(b) The contracting officer shall insert the clause at 1852.227-70, New Technology, in all NASA solicitations and contracts with other than a small business firm or a nonprofit organization (i.e., those subject to section 305(a) of the Act), if the contract is to be performed in the United States, its possessions, or Puerto Rico and has as a purpose the performance of experimental, developmental, research, design, or engineering work. Contracts for any of the following purposes may be considered to involve the performance of work of the type described above (these examples are illustrative and not limiting):

(1) Conduct of basic or applied research.

(2) Development, design, or manufacture for the first time of any machine, article of manufacture, or composition of matter to satisfy NASA's specifications or special requirements.

1832.502 Preaward matters.

1832.502-2 Contract finance office clearance.

The Director of the Headquarters Office of Procurement Contract Management Division (Code HK) is the approval authority for the actions at FAR 32.502-2, except the Associate Administrator for Procurement (Code HK) is the approval authority for any deviations addressed in FAR 32.502-2(b).

1832.502-4 Contract clauses.

1832.502-470 NASA contract clause.

The contracting officer may insert a clause substantially as stated at 1852.232-82, Submission of Requests for Progress Payments, in fixed-price solicitations and contracts that provide for progress payments. The recipient of the requests and number of copies may be changed as required.

1832.504 Subcontracts.

(c) Unusual progress payments to subcontractors shall be approved in accordance with 1832.501-2.

Subpart 1832.7--Contract Funding

1832.702 Policy.

1832.702-70 NASA policy.

(a) Cost-reimbursement contracts may be incrementally funded only if all the following conditions are met (except that, for cost-reimbursement R&D contracts under which no supplies are deliverable, only the condition in subparagraph (a)(3) of this subsection applies):

(1) The total value of the contract (including options as defined in FAR Subpart 17.2) is \$1,000,000 or more.

(2) The period of performance under the contract overlaps the succeeding fiscal year.

(3) The funds are not available to fund the total contract value fully at award.

(b) Fixed-price contracts, other than those for research and development, shall not be incrementally funded.

(c)(1) Fixed-price contracts for research and development may be incrementally funded if the conditions in 1832.702-70(a)(1)-(3) are met and the initial funding of the contract is not less than 50 percent of the total fixed price.

(2) Incrementally funded fixed-price contracts shall be fully funded as soon as adequate funding becomes available.

(d) The procurement officer, with the concurrence of the installation Comptroller, may waive any of the conditions set forth in paragraphs 1832.702-70(a)-(c). The procurement officer shall maintain a record of all such approvals during the fiscal year.

(e) A class deviation from the conditions set forth in paragraphs 1832.702-70(a), (b) and (c) exists to permit incremental funding of contracts under Phase II of the Small Business Innovation Research (SBIR) Program (through September 30, 2000) and Phase II of the Small Business Technology Transfer (STTR) program (through September 30, 2001). This deviation exists with the understanding that the contracts will be fully funded when funds become available.

1832.704 Limitation of cost or funds.

1832.704-70 Incrementally funded fixed-price contracts.

(a) Upon receipt of the contractor's notice under paragraph (c)(1) of the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), the contracting officer shall promptly provide written notice to the contractor that the Government is --

(1) Allotting additional funds in a specified amount for continued performance;

(2) Terminating the contract; or

(3) Considering whether to allot additional funds; and

(i) The contractor is entitled to stop work in accordance with paragraph (b) of the clause at 1852.232-77, Limitation of Funds; and

(ii) Any costs expended beyond the amount specified in paragraph (a) of the clause at 1852.232-77, Limitation of Funds, are incurred at the contractor's risk.

(b) Upon determining that the contract will receive no further funds, the contracting officer shall promptly give notice of the Government's decision and terminate for the convenience of the Government.

1832.705 Contract clauses.

1832.705-2 Clauses for limitation of cost or funds.

1832.705-270 NASA clauses for limitation of cost or funds.

(a) The contracting officer shall insert the clause at 1852.232-77, Limitation of Funds (Fixed-Price Contract), in solicitations and contracts for fixed-price incrementally funded research and development.

(b) The contracting officer shall insert a clause substantially as stated at 1852.232-81, Contract Funding, in Section B of solicitations and contracts containing the clause at FAR 52.232-22, Limitation of Funds. Insert the amounts of funds available for payment, the items covered, and the applicable period of performance. The amount obligated for fee in paragraph (b) of the clause should always be sufficient to pay fee anticipated to be earned for the work funded by the amount in paragraph (a) of the clause.

Subpart 1832.9--Prompt Payment

1832.906 Contract financing payments.

(a) Except as authorized in 1832.908, it is NASA's policy to make contract financing payments on the 30th day after the designated billing office has received a proper request. However, the due date for making contract financing payments for a specific contract may be earlier than the 30th

1852.232-81 Contract Funding.

As prescribed in 1832.705-270(b), insert the following clause:

**CONTRACT FUNDING
(JUNE 1990)**

(a) For purposes of payment of cost, exclusive of fee, in accordance with the Limitation of Funds clause, the total amount allotted by the Government to this contract is \$ _____. This allotment is for [Insert applicable item number(s), task(s), or work description] _____ and covers the following estimated period of performance: _____.

(b) An additional amount of \$ _____ is obligated under this contract for payment of fee.

(End of clause)

1852.232-82 Submission of Requests for Progress Payments.

As prescribed in 1832.502-470, insert the following clause:

**SUBMISSION OF REQUESTS FOR PROGRESS PAYMENTS
(MARCH 1989)**

The Contractor shall request progress payments in accordance with the Progress Payments clause by submitting to the Contracting Officer an original and two copies of Standard Form (SF) 1443, Contractor's Request for Progress Payment, and the contractor's invoice (if applicable). The Contracting Officer's office is the designated billing office for progress payments for purposes of the Prompt Payment clause.

(End of clause)

1852.233-70 Protests to NASA.

As prescribed in 1833.106-70, insert the following provision:

**PROTESTS TO NASA
(MARCH 1997)**

Potential bidders or offerors may submit a protest under 48 CFR part 33 (FAR Part 33) directly to the Contracting Officer. As an alternative to the Contracting Officer's consideration of a protest, a potential bidder or offeror may submit the protest to the Deputy Associate Administrator for Procurement, who will serve as or designate the official responsible for conducting an independent review. Protests requesting an independent review shall be addressed to Deputy Associate Administrator for Procurement, NASA Code H, Washington, DC 20546-0001.

(End of provision)

1852.235-70 Center for AeroSpace Information.

As prescribed in 1835.070(a), insert the following clause:

**CENTER FOR AEROSPACE INFORMATION
(JULY 1999)**

(a) The Contractor should register with and avail itself of the services provided by the NASA Center for AeroSpace Information (CASI) for the conduct of research or research and development required under this contract. CASI provides a variety of services and products as a central NASA repository of research information which may enhance contract performance. The address is set out in paragraph (d) of this clause.

(b) Should the CASI information or service requested by the Contractor be unavailable or not in the exact form necessary by the Contractor, neither CASI nor NASA is obligated to search for or change the format of the information. A failure to furnish information shall not entitle the Contractor to an equitable adjustment under the terms and conditions of this contract.

(c) When the contract otherwise requires the submission of monthly progress, quarterly progress, or final reports, as defined at 1827.406(b), the last page of such reports shall be a completed Standard Form (SF) 298, Report Documentation Page.

(d) When the contract requires the delivery of reports or data to CASI, a reproducible copy and a printed or reproduced copy of such reports or data shall be concurrently submitted to:

Center for AeroSpace Information (CASI)

Attn: Document Processing Section

7121 Standard Drive

Hanover, Maryland 21076-1320

(End of clause)

(b) The program office shall:

(1) Synopsise the AO in the Commerce Business Daily and on the NAIS prior to release;

(2) Determine if there is instrumentation or support equipment available which may be appropriate to the AO with all necessary background data considered essential for use by a proposer;

(3) Determine mailing lists, including the mailing list maintained by the International Affairs Division, Office of External Relations, for broad dissemination of the AO; and

(4) Assure mandatory provisions are contained in the AO.

(c) Other methods of dissemination of the AO may also be used, such as the use of press releases, etc. When possible, the AO should be widely publicized through publications of appropriate professional societies; however, NASA policy does not allow payment for the placement of advertisements.

1872.303 Responsibilities.

(a) The program office originator is responsible for the content of the AO and coordination with concerned Headquarters offices and field installations. All personnel involved in the evaluation of proposals are responsible for familiarizing themselves and complying with this part and other applicable regulations. To this end, they are expected to seek the advice and guidance of appropriate Headquarters program and staff offices, and Project Installation management.

(b) The Program Office is also responsible for coordinating the AO with the International Affairs, Educational Affairs, Management Support Divisions, Office of External Relations, Office of General Counsel, and Office of Procurement prior to issuance (see NPD 1360.2, Initiation and Development of International Cooperation in Space and Aeronautics Programs).

(c) Concurrence of the Office of Procurement is required before issuance of an AO.

1872.304 Proposal opportunity period.

(a) The AO must accommodate to the maximum extent practicable opportunities afforded by the Shuttle/Spacelab flights. The following methods may be used to enable an AO to be open for an extended period of time and/or to cover a series or range of flight possibilities or disciplines:

(1) The AO may be issued establishing a number of proposal submission dates. Normally, no more than three proposal submission dates should be established. The submittal dates may be spread over the number of months most compatible with the possible flight opportunities and the availability of resources necessary to evaluate and fund the proposals.

(2) The AO may be issued establishing a single proposal submission date. However, the AO could provide that NASA amend the AO to provide for subsequent dates for submission of proposals, if additional investigations are desired within the AO objectives.

(3) The AO may provide for an initial submission date with the AO to remain open for submission of additional proposals up to a final cutoff date. This final date should be related to the availability of resources necessary to evaluate the continuous flow of proposals, the time remaining prior to the flight opportunity(s) contemplated by the AO, and payload funding and availability.

(b) Generally, a core payload of investigations would be selected from the initial submission of proposals under the above methods of open-ended AOs. These selections could be final or tentative recognizing the need for further definition. Proposals received by subsequent submission

dates would be considered in the scope of the original AO but would be subject to the opportunities and resources remaining available or the progress being made by prior selected investigations.

(c) Any proposal, whether received on the initial submission or subsequent submission, requires notification to the investigator and the investigator's institution of the proposal disposition. Some of the proposals will be rejected completely and the investigators immediately notified. The

remaining unselected proposals may, if agreeable with the proposers, be held for later consideration and funding and the investigator so notified. However, if an investigator's proposal is considered at a later date, the investigator must be given an opportunity to validate the proposal with the investigator's institution and for updating the cost and other data contained in the original submission prior to a final selection. In summary, NASA may retain proposals, receiving Category I, II, or III classifications (see 1872.403-1(e)), for possible later sponsorship until no longer feasible to consider the proposal. When this final stage is reached, the investigator must be promptly notified. Proposing investigators not desiring their proposals be held for later consideration should be given the opportunity to so indicate in their original submissions.

1872.305 Guidelines for announcement of opportunity.

(a) The AO should be tailored to the particular needs of the contemplated investigations and be complete in itself. Each AO will identify the originating program office and be numbered consecutively by calendar year, e.g., OA-1-95, OA-2-95; OLMSA-1-95; OSS-1-95; etc. The required format and detailed instructions regarding the contents of the AO are contained in Appendix A.

(b) The General Instructions and Provisions (Appendix B) are necessary to accommodate the unique aspects of the AO process. Therefore, they must be appended to each AO.

(c) At the time of issuance, copies of the AO must be furnished to Headquarters, Office of Procurement (Code HS) and Office of General Counsel (Code GK).

(d) Proposers should be informed of significant departures from scheduled dates for activities related in the AO.

1872.306 Announcement of opportunity soliciting foreign participation.

Proposals for participation by individuals outside the U.S. shall be submitted in the same format (excluding cost plans) as U.S. proposals, typewritten in English, and reviewed and endorsed by the appropriate foreign governmental agency. If letters of "Notice of Intent" are required, the AO should indicate that they be sent to Headquarters, Office of External Relations, International Relations Division (Code IR). Should a foreign proposal be selected, NASA will arrange with the sponsoring foreign agency for the proposed participation on a no-exchange-of-funds basis, in which NASA and the sponsoring agency will each bear the cost of discharging its respective responsibilities. Note that additional guidelines applicable to foreign proposers are contained in the Management Plan Section of Appendix C (see Section II) and must be included in any Guidelines for Proposal Preparation or otherwise furnished to foreign proposers.

1872.307 Guidelines for proposal preparation.

While not all of the guidelines outlined in Appendix C will be applicable in response to every AO, the investigator should be informed of the relevant information required. The proposal may be